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February 10, 1999

BY HAND DELIVERY

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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FEB 10 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re:


In the Matter of Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations (Cross Plains, et. al.) MM Docket No. 98-198; RM-9304
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Dear Ms. Salas:

Transmitted herewith on behalf of Wagonwheel Broadcasting of Santa Anna are an original and four (4) copies of its "Opposition to Motion for Leave to File Second Supplement to Counterproposal" as directed to the Allocations Branch.

Should any additional information be required, please contact this office.

Very truly yours,



Henry E. Crawford
Counsel for
Wagonwheel Broadcasting of
Santa Anna

cc: the Allocations Branch

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Cross Plains, Texas et al.)

MM Docket No. 98-198

RM-9304

To: The Allocations Branch
Policy and Rules Division
Mass Media Bureau

**OPPOSITION TO MOTION FOR LEAVE TO FILE
SECOND SUPPLEMENT TO COUNTERPROPOSAL**

Wagonwheel Broadcasting of Santa Anna ("Wagonwheel"), by counsel, in accordance with 47 CFR §1.45(a), hereby opposes the *Motion for Leave to Supplement Record and Second Supplement to Counterproposal* ("Motion") filed in the above-referenced proceeding by First Broadcasting Management, L.L.C. ("FMB"), Gain-Air, Inc. and KCYT-FM License Corp. (collectively referred to as the "Joint Parties") on January 27, 1999. In support thereof, the following is stated:

1. On January 27, 1999, the Joint Parties filed their Second Supplement to Counterproposal ("Second Supplement"). In their first Supplement to Counterproposal, which was filed on the last day for filing comments in this proceeding, the Joint Parties noted that:

In view of the fact that the deadline for filing comments in this proceeding is December 21, 1998 it

is appropriate for the Commission to consider this supplement as timely filed.

Supplement to Counterproposal, p. 1, ¶1.

2. By the Joint Parties' own logic the instant Second Supplement, filed over a month later, is wholly inappropriate and cannot be considered by the Commission.

3. Ironically, only a week before filing the Motion, FBM, rose up in a huff of self-righteous indignation to strike Wagonwheel's Reply Comments. There, however, no prejudice or harm of any kind was demonstrated or could be demonstrated.¹ The Reply Comments were filed primarily for the purpose of clarification. Here, on the other hand, the untimely Second Supplement seeks a substitution of channels in addition to a site change. Acceptance will only further confuse and distort this already unwieldy proceeding.

4. The confusion caused by the Joint Parties' belated filings is illustrated by the conflict involving Channel 290 which Wagonwheel originally pointed out in its comments. In the Joint Motion to Strike Reply Comments, FBM argued, for the first time, that the allotment of Channel 290C3 to Cross Plains, Texas cannot be part of this proceeding because ALALATEX failed to file comments in support of the allotment.² Now, however, in the Engineering Statement attached to the Second Supplement, we see that the proposal to assign Channel 290C3 to Cross Plains is alive and well and can be found on

¹ See generally, Wagonwheel's Opposition to Joint Motion to Strike Reply Comments.

² Joint Motion to Strike Reply Comments, p. 1, ¶1.

Table 1A.³ The Joint Parties appear to be unable to accept the Commission's well established deadlines, and instead, continually seek to provide 'supplements', 'motions' and 'statements for the record' in a chaotic and misguided attempt to perfect their ill-considered proposals.

5. The cases cited by the Joint Parties are inapposite to the present circumstances. In South Congaree and Batesburg, South Carolina, 5 FCC Rcd 7480, 7483 n. 3 (MMB 1990), the Commission accepted reply comments which were filed in order to clarify the record and avoid the otherwise wasteful procedure of issuing a show cause order. Unlike the instant case, there was no attempt to substantially alter the underlying proposal. In Live Oak and St. Augustine, Florida, 4 FCC Rcd 758, 760-61 n. 4 (MMB 1989), the Commission allowed additional factual material to be added to the record because this information furthered the interests of a more complete record. If anything, these cases effectively counter the arguments made against Wagonwheel in the motion to strike. They do not open the door to substantially changing the Joint Parties' counterproposal, as is the case here. See, Santa Isabel, Puerto Rico and Christiansted, Virgin Islands, 3 FCC Rcd 2336 (1988) (untimely material submitted in allotment proceedings must be accompanied by a showing of unusual or compelling circumstances).

6. In conclusion, the Second Supplement is untimely and contrary to the public interest. The Joint Parties' ongoing attempts to piece together a creditable proposal out of these misfires is plainly unacceptable. Having failed to show any unusual or compelling circumstances at all, the Motion for Leave to

³ See, Second Supplement, Engineering Statement, Table 1A.

Supplement Record should be denied and the Second Supplement to Counterproposal rejected.

7. **WHEREFORE**, Wagonwheel Broadcasting of Santa Anna respectfully requests that the Motion for Leave to Supplement Record and the Second Supplement to Counterproposal filed by First Broadcasting Management, L.L.C., Gain-Air, Inc. and KCYT-FM License Corp. be denied and stricken from the record.

February 10, 1999

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Respectfully Submitted,

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By: 
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Its Attorney

CERTIFICATE OF SERVICE

I, Henry E. Crawford, do hereby certify that copies of the foregoing
Opposition to Motion for Leave to File Second Supplement to Counterproposal
have been served by United States mail, postage prepaid this 10th day of
February, 1999 upon the following:

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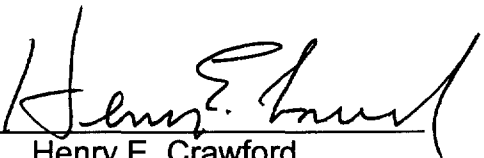
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